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Local Public Files: Their Contents, Inspection, Reproduction and Retention

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The Commission's requires that each broadcast licensee maintain a local public and that it be open to inspection by any member of the public. The Commission has repeatedly emphasized the importance of a complete and accurate public file. It relies in major part on on-site inspections by regional inspectors to monitor compliance with this requirement and it is frequently the first and most important non-technical item on an FCC inspector's checklist.

It cannot be stressed to emphatically how important it is to assure that each station has complied, in detail, by including all of the required contents in its public file. Each broadcaster station employee should know the licensee obligations and rights regarding requests to inspect and/or reproduce the public file. In addition to this information there is also a handy Public Inspection File Checklist at the end of this memorandum as Attachment I-A for commercial stations and as Attachment I-B for noncommercial stations. Detailed information about the Issues/Programs List is provided as Attachment II.

I. Location of the Public File

A broadcast station's local public inspection file must be located at its main studio, wherever located. Applicants for new stations or for a change of community of license of an AM station, though, may locate their public file either in the proposed community of license or at a proposed main studio which meets the above criteria. The "main studio" of a station may not be the location from which most of its business is conducted or from which most of its programming originates. To qualify as a main studio, a location must maintain program origination and production facilities and a full-time management and staff presence during business hours, and provide local or toll-free telephone service from the community of license. The main studio may be located either within 25 miles from the station's community of license reference coordinates, or within the principal community contour of any station, of any service, licensed to the community of license.

As an option to maintaining a paper file, broadcasters may maintain all or part of their public file in a computer database provided that a computer terminal is made available at the file location for the use of members of the public. If the station maintains a web site, it is also encouraged (but not required) to post their files on the web, but this option does not replace the fundamental obligation to maintain a paper file or electronic terminal.

II. Items Required to be Kept in the Public File

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A. Commercial and Noncommercial Stations

1. Authorization. A copy of the current FCC authorization to construct or operate the station, together with any documents reflecting modifications or conditions imposed upon the authorization.
 - Retention Period: Until replaced by a new authorization.

2. Applications and Related Materials. All pending applications tendered for filing with the FCC. If a petition to deny has been filed against the application, the file must also include a statement that such a petition has been filed, including the name and address of the petitioner. For applications subject to a hearing, copies of the initial and final decisions must also be included.
 - Retention Period: Until final action has been taken on the application, except that applications for which waivers have been granted must be retained for as long as the waiver is in effect, and short-term renewals must be retained until final action has been taken on the next renewal.

3. Contour Maps. A copy of any service contour maps submitted with any application filed with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter location.
 - Retention Period: So long as these materials reflect current information regarding the stations' operation.

4. Ownership Reports and Related Materials. A copy of the most recent, complete ownership report filed with the FCC, together with subsequent certifications of continued accuracy. The public file must also contain a copy of all contracts listed in the ownership report, or an up-to-date list of such contracts.
 - Retention Period:
 - Reports: until a new, complete ownership report is filed.
 - Contract copies: so long as the contract is in effect.
 - Lists: until replaced by an updated list.

5. Political File. Each station's public file must include a political file comprised of a log (or copies) of all requests to purchase broadcast time: (a) made by or on behalf of a legally qualified candidate; or (b) which communicates a message relating to any political matter of national importance, including messages about a legally qualified candidate, any election for Federal office, or a national legislative issue of public importance. The political file must include the following information:

- A record of all requests for broadcast time along with a notation of whether the request to purchase broadcast time is accepted or rejected by the licensee
- The class of time purchased
- The date and time on which the broadcast is aired
- The rate charged for the broadcast time, including any rebates given to candidates
- The name of the candidate, office, election or issue to which the communication refers (as applicable)
- If a request is made by or on behalf of a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee
- In the event of any other request, the name of the person purchasing the time, the name, address and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or board of directors of such purchaser
- In addition, licensees must also keep a record of any free time provided to or on behalf of candidates in the political file. Licensees are not required to keep records of general requests for information on rates and the availability of time.

Documentation should be placed into the political file as soon as possible -- at least within 24 hours. The file should also be kept current as to any changes in the required information (such as a rate adjustment or if a rebate is given). Moreover, the record must be complete and self-explanatory -- numerical notations and other data about requests which are not readily understandable by the public are inadequate.

- Retention Period: Two years.

6. EEO Public File. On each anniversary of the date of filing a renewal application, licensees must place in their local public inspection files (and post on their websites, if they have one) the following information covering hiring and activities during the preceding year:

- The job title of all full-time hires;
- The name, address, contact person and telephone number of each recruitment source used to fill each vacancy (including each organization entitled to automatic notification);
- The recruitment source that referred each full-time hiree;
- The total number of interviewees for each full-time vacancy and the number of interviewees referred by each recruitment source; and
- A list and brief description of each outreach initiative undertaken.

- Retention period: Until grant of the next renewal or license assignment becomes final (post only current report on website).
7. The Public and Broadcasting. The current version of this procedural manual was published in June, 1999.
(Can be retrieved from:
http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html
Scroll to bottom of the page to download a MS Word or PDF version for the public file)
- Retention period: Until replaced by an updated edition.
8. Issues/Programs Lists. A list of the programs that have provided the station's most significant treatment of community issues during the preceding calendar quarter. See Attachment II for a detailed description of these lists. Each list must include a brief narrative describing what issues were given significant treatment and a description of responsive programming, including the time, date, duration and title. Lists must be placed in the public file on January 10, April 10, July 10 and October 10, reflecting public affairs programming for the preceding calendar quarters. [Note: This requirement does not pertain to non-commercial or Class D FM, stations or those whose programming is wholly "instructional."]
- Retention Period: Until grant of the next renewal becomes final.
9. Local Public Notice Announcement. Certification of the dates, times and texts of pre-filing and post-filing broadcast announcements.
- Retention Period: Until final action on the renewal application to which they refer.
10. FCC Investigations or Complaints. Materials relating to any matter which is the subject of an FCC complaint or investigation (and not relating solely to private disputes).
- Retention Period: Until notified by the FCC that the material may be discarded.
11. Related Material. In addition to each of the above categories (and those separately listed below for commercial and non-commercial stations), licensees are required to include all exhibits, letters and other documents filed with or received from the FCC pertaining to any of the required materials. Also to be included are any materials incorporated by reference and not otherwise maintained in the public file. For example, if a revised ownership report states "on file/no change" in response to a question, then the file must include the earlier report(s) in which the information can be found.

B. Commercial Stations Only

1. Citizen Agreements. Written agreements primarily of a non-commercial nature between a broadcaster and one or more citizens or citizen groups which deal with goals or proposed practices affecting station operation in the public interest, such as programming and equal employment opportunities. It excludes common commercial agreements concerning advertising, unions, employment, personal services, network affiliation, syndication, program supply, etc.
 - Retention Period: For the term of the agreement, including any renewal or extension term.
2. Letters and E-mail from the Public. All written comments and suggestions received from the public regarding operation of a station unless the writer has requested anonymity or if the licensee feels that the content is defamatory, obscene or otherwise inappropriate for public review. E-mail must also be included if sent to a publicly-advertised e-mail address or to station management (but not staff members' personal e-mail), either by placing paper copies in the file or providing the public with a computer diskette or access to a computer terminal on which the e-mail can be viewed. **Note:** Only one sample copy need be retained of identical communications, together with a list identifying all sending parties.
 - Retention period: Three years.
3. Time Brokerage Agreements. Both the brokering and brokered station must place a copy of the agreement in their respective public files. Proprietary information (generally limited to financial data) may be redacted.
 - Retention Period: As long as the agreement is in effect.
4. Joint Sales Agreements. A copy of an agreement for the joint sale of advertising time involving the station. Proprietary information (generally limited to financial data) may be redacted.
 - Retention Period: As long as the agreement is in effect
5. Class A TV Eligibility [Class A TV Only]. Documentation to demonstrate that the Class A TV station broadcasts a minimum of 18 hours per day and broadcasts an average of at least 3 hours per week of locally produced programming each quarter.
 - Retention Period: Until grant of the next renewal becomes final.

6. Children's Programming Reports [TV Only]. Quarterly reports on FCC Form 398, to be placed in the public file by January 10, April 10, July 10 and October 10 of each year. Note: For quarters before 1997, when Form 398 was implemented, a narrative containing comparable information was to have been used.
 - Retention Period: Until grant of the next license renewal becomes final.
 7. Records Regarding Children's Commercial Limits [TV Only]. Also to be placed in the public file by January 10, April 10, July 10 and October 10 are records sufficient to permit substantiation of the station's certification of compliance with commercial limits on children's programming for the previous quarter.
 - Retention Period: Until grant of the next license renewal becomes final.
 8. Must Carry or Retransmission Consent Elections [TV Only].
 - Retention Period: For the duration of the three-year election period to which the statement applies.
- C. Non-Commercial Stations Only**
1. Donor Lists. Lists of donors supporting specific programs.
 - Retention Period: Two years.
 2. Must Carry Requests [TV Only]. Requests for mandatory carriage on any cable system.
 - Retention Period: For so long as the request applies.

III. Inspection and Reproduction of the Public File.

The entire public file (whether on paper or read from a computer database) must be available for public inspection *at any time during regular business hours*. Prior appointments may not be required, nor can an "off-the-street" request be refused on the ground of inconvenience. Personal identification (name and address only) may be required from any person requesting to review the public file, but information relating to organizational affiliation, the purpose of the request or other matters may not be requested. A station staff member should be assigned to supervise a requester's examination of the file to ensure its integrity (but not in a way that could be construed as intimidation). If a person becomes abusive or destructive, either when requesting inspection or during the inspection itself, the requester may (and should) be denied further access to the material. Also, if a person spends far more time than is reasonably necessary to examine and analyze the file materials, they may be required to have the materials of interest reproduced.

If any party desires material in the public file to be reproduced, the copies must be made available within seven days of receipt of the request. The station must honor all requests for reproduction made in person. If the public file is located outside the station's community of license, then it must also honor telephone requests from residents within the service area (grade B contour for TV, 0.5 mV/m contour for AM and Class B FM, 0.7 mV/m contour for Class B1 FM and 1.0 mV/m contour for all other FM) for everything except the political file. The station may, but is not required to, also honor requests made by mail. The requesting party may be required to pay all reasonable costs of reproduction, including the direct copying costs as well as associated expenses such as the allocated salaries and overhead of staff necessary to supervise the file materials during reproduction. The station, however, is required to pay postage to mail the copies to the requestor.

To facilitate requests for public file documents, stations whose public files are located outside their city of license are required to mail to callers within the service area noted above a copy of the current edition of "The Public and Broadcasting" manual. Both the copy and the mailing must be at the station's expense and free of charge to the caller. In addition, station personnel are required to assist callers within the service area by answering any reasonable questions about the actual contents of the station's public file (except the political file). As an example, the Commission indicates that, if asked, stations should be prepared to describe to a caller the number of pages and time periods covered by a particular ownership report or children's television programming report, or the types of applications actually maintained in the station's public file and the dates they were filed with the FCC. As previously mentioned, the Commission also encourages (but does not require) stations to place the descriptions of their public files on any Internet home page that they maintain.

Although radio and television have been substantially deregulated, the public inspection file is one of the few means by which the Commission maintains a sense of local service by requiring broadcasters to be responsive to their communities of license. Accordingly, the Commission tends to enforce its public file rules quite strictly.

Attorneys at Womble Carlyle would be pleased to answer any questions concerning these requirements or their application to a specific situation.

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**COMMERCIAL RADIO AND TELEVISION STATION
PUBLIC INSPECTION FILE CHECKLIST**

- 1) The Current Authorization.
 - Subsequent modifications or conditions
 - retain until superseded by a new authorization
- 2) All Applications tendered for filing with the FCC, together with:
 - Related amendments, correspondence, exhibits and documents
 - If a petition to deny is filed, a statement so indicating, including the name and address of the party filing the petition
 - All Initial and Final Decisions
 - retain until final action taken or so long as a waiver is in effect
- 3) Service Contour Maps submitted with any application
 - Information in an application showing main studio and transmitter location(s)
 - retain so long as current
- 4) The most recent full Ownership Report.
 - Subsequent certifications of continued accuracy
 - retain until superseded by a new, complete report
- 5) A current list or copies of all Contracts *listed* in the ownership report, such as:
 - Articles of incorporation and amendments
 - Bylaws and amendments
 - Partnership, L.L.C. or association agreements
 - Stock pledge and option agreements
 - Trust agreements
 - Voting proxies
 - Mortgage or loan agreements (limiting operational freedom)
 - Agreements providing for, or contracts reflecting, changes in officers, directors or stockholders
 - Contracts to share station losses and profits

- Management consulting agreements with independent contractors
- Network affiliation agreements [TV stations only]
- Time brokerage agreements with parties who control a station with overlapping contours
 - retain list until replaced by updated one; retain copies of agreements for so long as in effect.

- 6) Political file:
 - List of all requests for broadcast time
 - Disposition of requests, including the class of time purchased, the date and time when the spots aired, the rates charged, including any rebates given to candidates, and the name of the candidate, office, election or issue to which the spot refers
 - Record of all free time provided to candidates
 - Record of the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee if request is made by or on behalf of a candidate
 - Record of the name of the person purchasing the time, the name, address and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or board of directors of such purchaser
 - retain for two years

- 7) EEO Public File:
 - The job title of all full-time hires;
 - The name, address, contact person and telephone number of each recruitment source used to fill each vacancy (including each organization entitled to automatic notification);
 - The recruitment source that referred each full-time hiree;
 - The total number of interviewees for each full-time vacancy and the number of interviewees referred by each recruitment source; and
 - A list and brief description of each outreach initiative undertaken.
 - retain until grant of the next renewal or license assignment becomes final

- 8) “The Public and Broadcasting - A Procedural Manual” (current version; June 1999)
 - retain until replaced by updated edition

- 9) Quarterly Issues/Programs Lists (See Attachment II)

- retain until grant of next license renewal becomes final
- 10) Compliance certificates for the broadcast of Local Notice of Renewal Applications
 - retain until grant of next license renewal becomes final
- 11) Agreements with Citizens or groups of citizens affecting the station's operation
 - retain for so long as agreement is in effect
- 12) Letters from public, including e-mail sent to publicly-advertised e-mail address or to station management, but not staff e-mail (unless anonymity is requested or unless defamatory or obscene)
 - retain for three years
- 13) FCC investigations or complaints
 - retain until notified by FCC
- 14) Time Brokerage Agreements
 - retain as long as the agreement is in effect
- 15) Joint Sales Agreements
 - retain as long as the agreement is in effect
- 16) [Class A TV Only] Class A TV Eligibility
 - retain until grant of the next renewal becomes final
- 17) [TV only] Children's Programming:
 - Quarterly reports of core and other programming on FCC Forms 398 (or narrative exhibits for quarters before 1997)
 - Records showing compliance with commercial limits in children's programming
 - retain until grant of next license renewal becomes final
- 18) [TV only] Must-Carry/Retransmission Consent election statements
 - retain for duration of 3 year election period

- 16) FCC Correspondence: All correspondence either sent to or received from the FCC relating to any of the foregoing materials
- retain for as long as the material to which the correspondence relates

Note: Although not to be placed in the public file, the following must be kept at the station and made available for inspection by the FCC:

- Subchannel leasing agreements for Subsidiary Communications Authorization (SCA) operation
- Franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal
- Time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the broadcast event (e.g., athletic contests, musical programs and special events) is not under control of the station
- Contracts with chief operators
- retain for so long as each is still in effect

**NONCOMMERCIAL RADIO AND TELEVISION STATION
PUBLIC INSPECTION FILE CHECKLIST**

- 1) The Current Authorization.
 - Subsequent modifications or conditions
 - retain until superseded by a new authorization
- 2) All Applications tendered for filing with the FCC, together with:
 - Related amendments, correspondence, exhibits and documents
 - If a petition to deny is filed, a statement so indicating, including the name and address of the party filing the petition
 - All Initial and Final Decisions
 - retain until final action taken or so long as a waiver is in effect
- 3) Service Contour Maps submitted with any application
 - Information in an application showing main studio and transmitter location(s)
 - retain so long as current
- 4) The most recent full Ownership Report.
 - Subsequent certifications of continued accuracy
 - retain until superseded by a new, complete report
- 5) A current list or copies of all Contracts *listed* in the ownership report, such as:
 - Articles of incorporation and amendments
 - Bylaws and amendments
 - Partnership, L.L.C. or association agreements
 - Stock pledge and option agreements
 - Trust agreements
 - Voting proxies
 - Mortgage or loan agreements (limiting operational freedom)
 - Agreements providing for, or contracts reflecting, changes in officers,

- directors or stockholders
 - Contracts to share station losses and profits
 - Management consulting agreements with independent contractors
 - Network affiliation agreements [TV stations only]
 - Time brokerage agreements with parties who control a station with overlapping contours
 - retain list until replaced by updated one; retain copies of agreements for so long as in effect.

- 6) Political file:
 - List of all requests for broadcast time
 - Disposition of requests, including the class of time purchased, the date and time when the spots aired, the rates charged, including any rebates given to candidates, and the name of the candidate, office, election or issue to which the spot refers
 - Record of all free time provided to candidates
 - Record of the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee if request is made by or on behalf of a candidate
 - Record of the name of the person purchasing the time, the name, address and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or board of directors of such purchaser
 - retain for two years

- 7) EEO Public File:
 - The job title of all full-time hires;
 - The name, address, contact person and telephone number of each recruitment source used to fill each vacancy (including each organization entitled to automatic notification);
 - The recruitment source that referred each full-time hiree;
 - The total number of interviewees for each full-time vacancy and the number of interviewees referred by each recruitment source; and
 - A list and brief description of each outreach initiative undertaken.
 - retain until grant of the next renewal or license assignment becomes final

- 8) “The Public and Broadcasting - A Procedural Manual” (current version; June, 1999)

- retain until replaced by updated edition
- 9) Quarterly Issues/Programs Lists (See Attachment II)
 - retain until grant of next renewal becomes final
- 10) Compliance certificates for the broadcast of Local Notice of Renewal Applications
 - retain until grant of next renewal becomes final
- 11) FCC investigations or complaints
 - retain until notified by FCC
- 12) Donor Lists
 - two years
- 13) [TV Only] Must Carry Requests
 - retain as long as the request applies
- 14) FCC Correspondence: All correspondence either sent to or received from the FCC relating to any of the foregoing materials
 - retain for as long as the material to which the correspondence relates

“ISSUES/PROGRAMS LIST” REQUIREMENTS

On a quarterly basis, i.e., January 10th, April 10th, July 10th, and October 10th, licensees are required to compile and place in their local public file an Issues and Programs List. Each quarterly list is to reflect “programs that have provided the station’s most significant treatment of community issues” during the preceding three months. If a program is not included, the licensee may not be entitled to receive credit for it later. Consequently, licensees should compile comprehensive and accurate lists. The burden upon a licensee is to put its best foot forward in the list and not to “hold back” a listing of programming which might prove more impressive than that listed. The list should enumerate some of the community issues the station addressed during the preceding quarter and programming that gave the most significant treatment to those issues. Each quarterly list must include a brief narrative explaining why those issues were chosen, and a narrative description of the programming that addressed the issue, the program’s title, duration, and time and date of airing.

All Commission licensees have a responsibility to provide issue-responsive programming. The Commission has stated that the gravamen of its public interest standard is responsive performance and that the key question is whether the licensee took steps to meet that obligation. Therefore, the licensee should place its emphasis on quality rather than quantity. The issues and programs lists’ function is to give the public substantial and sufficient information about your station’s issue-responsive programming to determine whether your station has fulfilled its programming obligation.

The term “issue” has been sweepingly defined by the Commission as a point of discussion, debate, or dispute that is a matter of wide public concern. In choosing issues on which to focus, actual programming of other licensees in the community may be taken into account. Thus, for example, if your program format is not attractive to senior citizens and another station in the market actually programs toward that audience and addresses issues of concern to them, you do not have to program toward those issues. Though the Commission has done away with its formal ascertainment requirements, licensees should select a meaningful way to determine the issues they believe are of importance to the community, including surveys, focus groups, and interviews with leaders and the public.

No minimum number of issues must be identified. The Commission has suggested that a licensee whose lists include at least five issues should be able to demonstrate compliance with its issue-responsive programming obligation. However, the Commission has recognized and taken into account the large variety of programming decisions and options, noting that a licensee might, for example, choose to concentrate on fewer than five issues and cover them in considerable depth during the quarter. Other licensees may cover more than ten issues due to the format and program length assigned to issue-responsive programming. Even considering these factors, we recommend that at least five issues be given significant programming treatment and that those issues and programs be included in the quarterly list.

The Commission leaves issue-responsive programming decisions to the good faith discretion of the licensee and no one specific type of programming is mandatory. In general, almost any informational programming will count. Examples of such programming include local or national news programs or reports, public affairs interviews and, to some extent, public service announcements. The Commission is looking for actual programming and not promotional announcements for station activities.

The issues and programs lists are of extreme importance. In the event that the licensee is challenged at renewal time, the lists will be the licensee's primary means of demonstrating that it is entitled to renewal. Deficient issues and programs lists may be used by challengers in a petition to deny the license renewal application to demonstrate that the licensee is not meeting its issue-responsive programming obligations.